

Attachment 1

Summary of Proposed Regulation

This attachment provides the basis and a summary of the proposed regulation. The complete text of the proposed regulation is provided in attachment 2.

A. Summary of the Proposed Regulation

The proposed regulation includes the following components:

- Requires businesses that generate 4 cubic yards or more of trash and recyclables per week to recycle solid waste that they generate by subscribing to a recycling service, source separating their material and self-hauling to a recycling facility, or having their material processed in a mixed waste processing facility.
- Requires each local jurisdiction, regardless of whether the jurisdiction has met its 50% equivalent per capita disposal target, to implement a commercial recycling program by July 1, 2012, that consists of education and outreach and monitoring to businesses as defined above. If a jurisdiction already has a commercial recycling program that targets businesses as defined above and addresses outreach, education, and monitoring, it would not be required to implement a new or expanded program.
- Suggests that the jurisdiction's commercial recycling program could include, but is not limited to, implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the franchise contract or agreement, and/or requiring that all commercial recycling materials go through a mixed waste processing system that diverts material at a certain level.
- Allows jurisdictions the flexibility to implement a commercial program that meets their local needs and works with their existing infrastructure. For example, a jurisdiction's recycling program may include an enforcement component; the enforcement component may include all businesses subject to a jurisdiction's recycling program or a subset of these businesses; and, a jurisdiction's recycling program may apply to businesses beyond those as defined in this regulation.
- Protects existing franchise agreements, contracts, licenses, and the right of businesses to sell or donate recyclable materials.
- Makes CalRecycle responsible for evaluating jurisdiction performance in implementing the mandatory commercial recycling program, for enforcement, and for measuring greenhouse gas emissions reductions associated with commercial recycling at the statewide level.

- Retains ARB's ultimate authority for oversight and implementation of the proposed regulation, including, if required, use of ARB's statutory enforcement procedures.

B. Purpose (§ 9XXX0)

Subsection (a)

The purpose of this Article is to implement the Mandatory Commercial Recycling Measure (RW-3) provisions of the Scoping Plan adopted by the State Air Resources Board pursuant to Assembly Bill 32, (Nunez, 2006) §38500, et seq., of the Health and Safety Code.

C. § 9XXX1 Definitions

§ 9XXX1 is necessary as a number of technical and administrative terms appear in this article that requires definition to ensure regulatory consistency and clarity.

Subsection 9XXX1 (a)

Because this proposed regulation will appear in the statutes governing ARB, for regulatory consistency and clarity Subsection (a) is necessary to explain that, except as specifically noted in the proposed regulation, the technical and administrative terms in this article incorporate the definitions of those terms which appear in the Public Resources Code sections pertaining to CalRecycle.

Subsection 9XXX1 (b)

Subsection (b) is necessary to define the technical and administrative terms that appear in this article that require definition.

Subsection (b)(1)

Subsection (b)(1) defines the term "Annual Report." This subsection is necessary to clarify the type of report required and the method in which it is to be submitted.

Subsection (b)(2)

Subsection (b)(2) is necessary to clarify that the term "CalRecycle" used in this article means the Department of Resources Recycling and Recovery.

Subsection (b)(3)

Subsection (b)(3) defines the term "Jurisdiction." This subsection is necessary to clarify which types of governmental entities are subject to the requirements of this article.

Subsection (4)

Subsection (b)(4) defines the term "Business." This subsection is necessary to clarify which types of commercial entities are subject to the requirements of this article.

Subsection (b)(5)

Subsection (b)(5) defines the term “Commercial solid waste.” This subsection is necessary to clarify the types of material that shall be recycled in order to meet the requirements of this article.

Subsection (b)(6)

Subsection (b)(6) defines the terms “Diversion” or “divert.” This subsection is necessary to clarify the required end result of a jurisdiction’s implementation of its commercial recycling program, specifically to reduce the amount of solid waste being disposed of in landfills. Transformation is explicitly excluded from the definition of “Diversion” or “divert” only for the purposes of this chapter.

This exclusion does not prohibit waste from being sent to transformation facilities and does not change the provision that allows jurisdictions to obtain up to 10 percent transformation credit as part of their per-capita disposal calculations under § 41783 of the Public Resources Code. This exclusion also would not prohibit loads of commercial material from being sent to a transformation facility, as long as the existing requirement for front-end processing to remove recyclable materials before transformation is met.

Subsection (b)(7)

Subsection (b)(7) defines the term “Disposal.” This subsection is necessary to clarify the activity that a business shall minimize through diversion.

Subsection (b)(8)

Subsection (b)(8) defines the term “Franchise.” This subsection is necessary to clarify that the existing contractual and other legal obligations between a jurisdiction and a hauler to transport solid waste would not be modified or abrogated by this article.

Subsection (b)(9)

Subsection (b)(9) defines the term “Hauler.” This subsection is necessary to clarify the action required of businesses regarding movement of commercial solid waste. This action includes either self-haul or subscribing to a service that hauls.

Subsection (b)(10)

Subsection (10) defines the term “Landfill.” This subsection is necessary to ensure regulatory consistency and clarity.

Subsection (b)(11)

Subsection (b)(11) defines the term “Mixed Waste.” This subsection is necessary to add clarity to an option for a business to consider for meeting the requirement to recycle its commercial waste. One option is subscribing to a recycling service that includes mixed waste processing.

Subsection (b)(12)

Subsection (b)(12) defines the terms “Recycle” or “recycling.” This subsection is necessary to clarify the type of program a business shall undertake and a jurisdiction shall implement to satisfy the requirements of this article; and to assure regulatory consistency and clarity.

Subsection (b)(13)

Subsection (b)(13) defines the term “Recycling services.” This subsection is necessary to clarify the type of service to which a business may subscribe, if available, in order to comply with the regulation.

Subsection (b)(14)

Subsection (b)(14) defines the term “Recycling facility.” This subsection is necessary to clarify the type of facility(ies) that a business may contract for their waste materials to be processed, or transport materials itself, that would be considered as complying with the regulation.

Subsection (b)(15)

Subsection (b)(15) defines the terms “Recyclables” and “recyclable materials.” This subsection is necessary to clarify what materials are considered as being subject to or able to be counted toward compliance with the regulation.

Subsection (b)(16)

Subsection (b)(16) defines the terms “Self hauler” or “self hauling.” This subsection is necessary to add clarity to an option for a business to consider for meeting the requirement to recycle its commercial waste. One option is transporting its own waste to a recycling facility.

Subsection (b)(17)

Subsection (b)(17) defines the terms “Source separating” or “source separation.” This subsection is necessary to clarify the process required of the owner or operator of a business to recycle its commercial solid waste when choosing the option described in Section 9XXX2(a) to either self-haul or subscribe to a service that hauls the recyclable materials separately from the solid waste to divert them from disposal.

Subsection (b)(18)

Subsection (b)(18) defines the term “Solid waste.” This subsection is necessary to define the types of materials subject to requirements of this article.

D. § 9XXX2. Mandatory commercial recycling by businesses

Section 9XXX2 specifies the requirements a business shall meet to recycle its commercial solid waste.

Subsection (a)

Section 9XXX2(a) specifies that the owner or operator of a business shall recycle its commercial solid waste by taking one of the materials management options described in Sections 9XXX2(a)(1) or 9XXX2(a)(2). This is necessary to define the party responsible for recycling commercial solid waste.

Subsection (a)(1)

Subsection (a)(1) specifies methods that the owner or operator of a business may take to meet the requirement of this article to recycle the business' commercial waste: by source separating recyclable materials and self-hauling these separately from the solid waste or subscribing to a service that hauls these source-separated recyclable materials. This is necessary to inform business owners and operators of actions they may take to meet the requirement that commercial solid waste generated as part of business operations is recycled.

Subsection (a)(2)

Subsection (a)(2) specifies a method that the owner or operator of a business may take to meet the requirement of this Article to recycle the business's commercial waste: by subscribing to an alternative type of recycling service that includes mixed waste processing that diverts recyclable materials from disposal. This is necessary to inform business owners and operators of an action they may take to meet the requirement that commercial solid waste generated as part of business operations is recycled.

Subsection (b)

Subsection (b) specifies that each business is responsible for ensuring and demonstrating its compliance with the requirements of Section 9XXX2. This is necessary to inform businesses of their responsibilities to ensure and demonstrate compliance with the commercial recycling requirement. In addition, this allows a jurisdiction and CalRecycle to determine whether or not a business is in compliance with the commercial recycling requirements of this section.

Subsection (c)

Subsection (c) specifies that the authority of a jurisdiction is not limited by this section and that it may adopt, implement, or enforce a more stringent or comprehensive recycling program and that businesses located in such a jurisdiction are required to comply with local requirements. This is necessary to inform affected parties that in regards to more stringent or comprehensive recycling programs, a local jurisdiction is not limited by the statewide requirements for a business to recycle its commercial waste and businesses within a jurisdiction shall, at minimum, comply with the more stringent requirements (either statewide or local). This allows jurisdictions a level of autonomy to adopt, implement, or enforce more stringent or comprehensive recycling programs more suited to local conditions.

Subsection (d)

Subsection (d) specifies that legal mechanisms and rights described in this Subsection shall not be modified or abrogated by Section 9XXX2. This is necessary to assure relevant parties that this subsection does not affect legal mechanisms and rights.

Subsection (d)(1)

Subsection (d)(1) specifies a legal mechanism that cannot be modified or abrogated by Section 9XXX2: a franchise granted or extended by a city, county, or other local government agency. This is necessary to assure franchisees that this section does not modify or abrogate a franchise agreement granted by local government. This offers protection to the franchisee from the threat of unforeseen and disruptive changes to an existing franchise agreement.

Subsection (d)(2)

Subsection (d)(2) specifies a legal mechanism that cannot be modified or abrogated by Section 9XXX2: a contract, license, or permit to collect solid waste previously granted or extended by a city, county, or other local government agency. This is necessary assure franchisees that this section does not modify or abrogate a contract, license, or permit to collect solid waste granted by local government. This offers protection to the franchisee from the threat of unforeseen and disruptive changes to an existing contract, license, or permit to collect solid waste.

Subsection (d)(3)

Subsection (d)(3) specifies a right that cannot be modified or abrogated by Section 9XXX2: the existing right of a business to sell or exchange its recyclable materials at fair market value, for reuse or recycling, or to donate its recyclable materials to another entity for reuse or recycling. This subsection is necessary to as a codification of statutory and case law and protects a business from being required to sell or exchange its recyclable materials at less than fair market value, and allows a business to donate its recyclable materials to another entity for reuse or recycling.

4. Section 9XXX3. Implementation of commercial recycling program by jurisdictions.

Section 9XXX3 specifies the requirements a jurisdiction shall meet to implement a commercial recycling program.

Subsection (a)

Subsection 9XXX3(a) specifies that effective July 1, 2012, each jurisdiction shall implement a commercial recycling program that consists of education, outreach, and monitoring of businesses, as defined in §9XXX1(4). This is necessary to define the party responsible and timeline for implementing a commercial recycling program.

Subsection (b)

Subsection (b) specifies that a jurisdiction shall determine the specific material types included in its commercial recycling program and lists types of materials that could be included. This is necessary to ensure a jurisdiction can target specific material types for

inclusion in its commercial recycling program which, based on local conditions, may differ from other jurisdictions.

Subsection (c)

Subsection I specifies that if, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets the requirements of this article, the jurisdiction will not be required to implement a new or expanded program. This is necessary to protect jurisdictions that have already implemented suitable commercial recycling programs from being required to implement a new program. In the event a jurisdiction's existing recycling program does not include all businesses as defined in this regulation, the program will need to be revised to do so.

Subsection (d)

Subsection (d) specifies that if, in order to satisfy the requirements of this article, a jurisdiction has to implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code §41800 et seq. In addition, this subsection specifies that the jurisdiction shall include the addition or expansion of a commercial recycling program in its electronic annual report. This is necessary to ensure CalRecycle is provided information annually on jurisdictions' implementation of their commercial recycling programs, but offers relief to jurisdictions by exempting them from the statutory requirement to revise Source Reduction and Recycling Elements when implementing a new, or expanding an existing, commercial recycling program.

Subsection (e)

Subsection (e) specifies that the recycling program adopted pursuant to subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses, to recycle; requiring a mandatory commercial recycling program, through a franchise agreement or contract; or requiring that commercial solid waste from businesses be sent to a mixed waste processing facility. This is necessary to inform jurisdictions of optional components that may be included in a recycling program.

Subsection (f)

Subsection (f) specifies that the commercial recycling program shall apply to businesses, but may also apply to any other commercial entity identified by the jurisdiction as being a source of recyclable materials. This is necessary to ensure jurisdictions have the ability to include commercial entities that are sources of recyclable materials that otherwise do not meet the Section 9XXX1(a)(4) definition of business.

Subsection (g)

Subsection (g) specifies that the commercial recycling program shall include education and outreach to businesses and that the jurisdiction shall determine the types of educational and outreach programs to ensure that the program targets the components of the jurisdiction's commercial waste stream. This is necessary to ensure affected businesses are adequately informed about a jurisdiction's commercial recycling

program, their requirements to recycle, and the components of the waste stream that the jurisdiction has targeted.

Subsection (h)

Subsection (h) specifies that the commercial recycling program shall include identification and monitoring of businesses, to assess if businesses are subscribing to and participating in recycling services. In addition, this subsection specifies that the jurisdiction shall, at a minimum, notify businesses that are not in compliance with these regulations. This is necessary to ensure that businesses required by these regulations to recycle commercial waste are identified and monitored, and that they are notified if not in compliance.

Subsection (i)

Subsection (i) specifies additional components the recycling program may include. This is necessary to inform jurisdictions of different types of components that can contribute to an effective recycling program.

Subsection (i)(1)

Subsection (i)(1) specifies that an additional component of the recycling program may include enforcement, including but not limited to a penalty or fine structure that, consistent with a jurisdiction's authority, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. In addition, this subsection specifies that any fees or penalties generated by the enforcement program shall be used to pay the costs of operation, outreach, education, and other associated program costs. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (i)(2)

Subsection (i)(2) specifies that an additional component of the recycling program may include building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses with the program. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (i)(3)

Subsection (i)(3) specifies that an additional component of the recycling program may include exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of storage space, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (i)(4)

Subsection (i)(4) specifies that an additional component of the recycling program may include certification requirements for self-haulers which may include, but are not limited

to, requiring businesses, to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program. This is necessary to inform jurisdictions of a type of component that can contribute to an effective recycling program.

Subsection (j)

Subsection (j) specifies that each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, monitoring, and enforcement efforts as applicable, by providing updates in its electronic annual report. This is necessary to ensure CalRecycle is provided information annually on jurisdictions' recycling programs, but to provide relief to jurisdictions by exempting them from the statutory requirement to revise Source Reduction and Recycling Elements when implementing a new, or expanding an existing, commercial recycling program.

Subsection (k)

Subsection (k) specifies that the recycling program implemented by the jurisdiction does not limit the existing right of any business to sell or exchange its recyclable materials at fair market value, for reuse or recycling, or to donate its recyclable materials to another entity for reuse or recycling. This subsection is necessary to protect a business from being required by a jurisdiction's recycling program to sell or exchange its recyclable materials at less than fair market value, or donating its recyclable materials to another entity for reuse or recycling.

5. §9XXX4. CalRecycle Review.

Section 9XXX4 specifies the oversight responsibilities of CalRecycle in ensuring a jurisdiction implements a commercial recycling program in accordance with this Article.

Subsection (a)

Subsection 9XXX4(a) specifies it is CalRecycle's responsibility to review a jurisdiction's compliance with its requirements under this Article to implement a commercial recycling program. Also, this subsection specifies the commencement date and mechanism for this review. This is necessary to clarify the responsibilities of CalRecycle in reviewing a jurisdiction's compliance with its requirements under this Article to implement a commercial recycling program.

Subsection (b)

Subsection (b) specifies that CalRecycle may also review whether a jurisdiction is in compliance with its requirements under this Article to implement a commercial recycling program any time it receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement its program. This is necessary to provide CalRecycle with an additional method for determining whether a jurisdiction is in compliance with its requirements under this Article to implement a commercial recycling program, other than through review of a jurisdiction's Source Reduction and Recycling Element and Household Hazardous Waste Element. Also, this is necessary to clarify

that CalRecycle can act should it determine that a jurisdiction is not meeting its requirements under Section 9XXX3.

Subsection (c)

Subsection (c) specifies that during its review of a jurisdiction's compliance with its requirements under this Article to implement a commercial recycling program, CalRecycle is required to determine whether each jurisdiction has made a good faith effort to implement the program. This subsection clarifies the criteria a jurisdiction is required to meet in order for CalRecycle to determine whether a "good faith effort" has been made. Also, this subsection specifies some factors that CalRecycle may include in its evaluation of a jurisdiction's "good faith effort." This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

Subsection (c)(1)

Subsection (c)(1) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to, considering the extent to which the businesses have subscribed to recycling services, including information on the amount of disposal that is being diverted from the businesses and on the number of businesses that are subscribing to service. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

Subsection (c)(2)

Subsection (c)(2) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to considering the extent to which the jurisdiction is conducting education and outreach to businesses in accordance with this section. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

Subsection (c)(3)

Subsection (c)(3) specifies that in its evaluation of a jurisdiction's "good faith effort," CalRecycle may include, but is not limited to considering the extent to which the jurisdiction is monitoring businesses and notifying those businesses that are out of compliance. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

Subsection (c)(4)

Subsection (c)(1) specifies that in its evaluation of a jurisdiction's "good faith effort," during its review, CalRecycle may include, but is not limited to considering the availability of markets for collected recyclables. This is necessary to clarify criteria that CalRecycle may use in determining whether a jurisdiction is making a "good faith effort" to implement a commercial recycling program. This is necessary to ensure each jurisdiction is making a sufficient effort to implement a commercial recycling program.

Subsection (c)

Subsection (c) specifies that a jurisdiction's failure to implement its commercial recycling program may be a sufficient basis for issuance of a compliance order, even if the jurisdiction has met its 50% per capita equivalent disposal target. This is necessary to ensure that in the event a jurisdiction fails to implement its commercial recycling program, CalRecycle can issue a compliance order for achieving compliance. This is necessary to ensure each jurisdiction is meeting the requirements of this Article to implement a commercial recycling program.

Subsection (d)

Subsection (d) specifies that if, after a public hearing on the matter, CalRecycle finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program, CalRecycle shall issue a compliance order with a specific schedule for achieving those requirements. This is necessary to ensure that a jurisdiction that is not complying with the requirements of this Article to implement a commercial recycling program is issued a compliance order with a specific schedule for achieving these requirements.

Subsection (e)

Subsection (e) specifies that the compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. Also, this subsection specifies that CalRecycle shall also set a date by which the jurisdiction shall meet the requirements of the compliance order. This is necessary to identify, for the jurisdiction, which aspects of its program are not being implemented or attained, and to set a date for the jurisdiction to comply with the requirements. This is necessary to ensure each jurisdiction is meeting the requirements of this Article to implement a commercial recycling program.

Subsection (f)

Subsection (f) specifies that CalRecycle shall hold a hearing to determine whether a jurisdiction has complied with the terms of the compliance order and if CalRecycle determines that the jurisdiction has failed to make a good faith effort to implement its commercial recycling program in accordance with this Article, CalRecycle may impose administrative civil penalties upon the jurisdiction of up to ten thousand dollars (\$10,000.00) per day until the jurisdiction implements the program. This is necessary to ensure a jurisdiction has the right to a public hearing on whether it has complied with the terms of a compliance order and CalRecycle determines that the jurisdiction has failed to make a good faith effort to implement its commercial recycling program in accordance with this Article, the jurisdiction is subject to administrative civil penalties until the program is implemented. This is necessary to ensure each jurisdiction is meeting the requirements of this Article to implement a commercial recycling program.

§9XXX5. ARB Oversight

Section 9XXX5 is necessary to explain ARB's role and function of responsibility and authority for oversight in implementation and, if necessary, enforcing the proposed regulation.

E. Alternatives Considered

California Government Code Section 11346.2 requires ARB to consider and evaluate reasonable alternatives to the proposed regulation. Staff evaluated three key alternatives to the proposed regulation to implement mandatory commercial recycling. No alternative considered by CalRecycle would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective as or less burdensome to affected private persons than the proposed regulation.

1. No Action

A 'no action' alternative would forego adoption of the proposed regulation. This alternative was rejected as it would result in failure to reduce greenhouse gas emissions from waste generated by businesses that is currently disposed in landfills.

2. Voluntary Commercial Recycling Measure

In developing the Commercial Recycling Measure, staff discussed whether to propose a mandatory or voluntary approach. Staff initially proposed a voluntary approach, but subsequently a mandatory recycling approach was required because voluntary measures have largely been ineffective. ARB and CalRecycle decided on the mandatory commercial recycling regulation based on staff's review of existing ordinances, data from statewide waste characterization studies and other local studies, related past and current bills (and subsequent stakeholder comment and negotiation), and stakeholder feedback from the workshops. Although it is mandatory that the jurisdictions implement a commercial recycling program, the proposed regulation, allows

individual jurisdictions to decide whether or not to make commercial recycling mandatory or voluntary depending on local conditions within the jurisdiction.

3. Thresholds for Businesses

Staff considered various thresholds at which businesses would be subject to the proposed regulations. These include no threshold (i.e., all commercial businesses would be subject to regulation), business size (e.g., number of employees), amount of waste generated, and sectors (e.g., target sectors with the most potential to reduce greenhouse gas emissions).

No Threshold

Staff considered regulating all businesses, including water districts, schools, school districts, special districts, local government, hospitals, and state government. This was abandoned primarily because stakeholders were concerned about regulating more businesses than the program could support with assistance and enforcement.

Business Size

Staff considered regulating businesses based on the number of its employees (e.g., more than 100 employees). This was abandoned primarily for the following reasons:

- Representatives from smaller jurisdictions indicated such a threshold would exclude most if not all local businesses.
- The number of employees does not necessarily correlate with the amount of waste generated.
- Chain stores have multiple locations with only a few employees, but a total staff of hundreds or more across multiple locations. Thus, an individual store belonging to a chain could be subject to the regulation even though it generated minimal waste (e.g., less than 4 cubic yards of waste per week).

Amount of Waste Generated

Staff considered regulating businesses based on the amount of waste generated for the following reasons:

- Some stakeholders felt that using disposal and recycling service level as an indicator is more resource efficient. However, some stakeholders noted that it might be difficult to collect diversion data for all businesses in order to determine the generation total.

- Many stakeholders thought that the volume of waste generated would be a good method to determine who should be required to participate.
- Using the amount of generation as a threshold would create a consistent measurement that could be applied regionally so that nearby businesses do not have different requirements and services.

Sectors

Staff considered regulating businesses based on the sector to which they belonged. For example, the regulations could focus on business sectors with the most potential for reducing greenhouse gas emissions or target businesses that are not currently recycling. The relative importance of specific sectors can vary significantly from jurisdiction to jurisdiction and using a sector approach would require more information to implement than is readily available. The proposed regulations do not limit jurisdictions from including sector-specific requirements, addressing GHG emission reduction potential, or focusing on large generators. It also does not prohibit the implementation of a phased implementation of more stringent thresholds.

The proposed regulation would require all businesses that generate more than four (4) cubic yards of total solid waste and recyclable materials per week to comply with the regulation. There are several reasons for choosing this threshold. This is a standard service level for haulers and would be relatively easy to implement, and in addition this would provide a greater focus on those businesses and multi-family units that generate the most waste. This does not prohibit jurisdictions from including a more stringent threshold (e.g., fewer cubic yards or all businesses). The proposed threshold of four (4) cubic yards or more is based on staff's review of existing ordinances, data from statewide waste characterization studies and other local studies, related past and current bills (and subsequent stakeholder comment and negotiation), and stakeholder feedback from the workshops.

F. KEY ISSUES

As discussed earlier in this staff report, CalRecycle sought feedback regarding a number of key issues from its stakeholders to inform the regulatory development process. Most of the issues brought up during the course of informal discussions were addressed in workshops and at the December meeting of the California Integrated Waste Management Board (see [LINK TO AGENDA ITEM](#)). Also see Attachment X, which is a matrix summarizing stakeholder comments and staff responses. Two remaining key issues are discussed below:

- Excluding Transformation from Definitions of Diversion and Recycling
- Inclusion of Mixed Waste Processing as an Acceptable Practice

Excluding Transformation from Definitions of Diversion and Recycling

Although limited diversion credit from transformation is permitted within the compliance framework of meeting the State's AB 939 disposal reduction goal, the draft regulation does not include transformation in the definition of diversion or recycling for the purposes of the regulation. In terms of overall priority, transformation is the last of the waste management hierarchy with disposal. However, this proposed regulation would not prohibit waste from going to WTE. Nor would it require that haulers or jurisdictions measure how much goes to WTE from the commercial sector. While it is true that there may be GHG benefits resulting from transformation, this measure is about recycling -- ensuring that commercial recycling programs are decreasing disposal and increasing diversion of recyclable materials from disposal and getting them into the market to be made into new products. As long as waste, including commercial waste, complies with existing statute that requires front-end recovery of recyclable materials, then commercial residuals or loads with little recovery potential could continue to go to transformation facilities. The 10 percent transformation credit would still be fully allowed as long as the front-end recovery of materials occurs.

However, some stakeholders at previous meetings have suggested that excluding transformation is inconsistent with the statutory definition of diversion (Public Resources Code §40124), thereby causing confusion, and have noted that existing statute already requires front-end separation of recyclables from waste going to a transformation facility (PRC 41783(a)). To avoid any confusion with statutory definitions, another approach to consider would be to include transformation in the mandatory commercial recycling regulation, with an explicit reminder of the provision requiring that front end recycling, such as processing through a mixed waste processing facility would have to occur prior to the materials being utilized in a transformation process.

Inclusion of Mixed Waste Processing as an Acceptable Practice

AB 939 provides specific disposal reduction requirements for jurisdictions, but does not prescribe how this reduction is to be met. As a result, jurisdictions have implemented various types of collection and recycling programs. While source-separated collection programs were the norm in the 1990s, increasingly alternatives such as single-stream (i.e., all recycling in one container and solid waste/ refuse in another) and mixed waste processing (i.e., trash is sent to a processing facility for sorting out recyclables/ compostables) have been emerging as viable options as well. The draft regulatory language proposes inclusion of all of these collection and recycling options.

There are a number of benefits associated with allowing mixed waste processing as a means of complying with the mandatory commercial recycling regulation. A number of jurisdictions have developed solid waste infrastructures that include mixed solid waste processing as a method of commercial diversion. Including alternative recycling technologies, such as mixed waste processing facilities, allows the greatest flexibility for

jurisdictions to design programs that meet specific local circumstances while still meeting the intended disposal and greenhouse gas emission reductions. This approach allows greater opportunity to achieve the emission reduction goal by maximizing participation by the commercial sector. Jurisdictions utilizing mixed waste facilities can set performance standards so that they are performing at similar levels to source separated material recovery facilities.

There are some concerns associated with this flexible approach. Because mixed waste processing is considered a passive manner of recycling (that is, participants do not separate their materials, but instead all materials are placed in one bin and sorted at the materials recovery facility), this measure could be viewed as favoring such programs. If the mixed waste processing facility is not subject to any standards for processing and separation of recyclables from commercial enterprises, then the jurisdiction may not be diverting the necessary commercial sector materials. However, jurisdictions typically set performance standards to ensure they are performing at similar levels to source separated material recovery facilities. Also, in many areas where a mixed waste processing system is utilized generators can sort clean recyclables, such as cardboard, prior to the waste materials being deposited into the mixed waste bin. Also, jurisdictions that are going to use mixed waste processing systems for their commercial recycling programs and do not have set performance standards can set standards to ensure certain levels of diversion.

While there are some concerns associated with the regulatory language allowing mixed waste processing as a means of demonstrating compliance, this approach affords the most flexibility for jurisdictions to tailor a program to meet their particular needs. Therefore, the draft regulatory language will allow for such programs to fulfill the requirements to have a mandatory commercial recycling program. CalRecycle will review the information provided in the jurisdictions' Annual Reports and assess jurisdiction implementation of the regulation through its biennial and quadrennial reviews of the jurisdictions' diversion programs. CalRecycle also will use the 2014/15 study to assess, in collaboration with ARB, whether any adjustments are necessary to ensure effective implementation of this regulation.